

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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PROFICIO MORTGAGE VENTURES, LLC,

Case No. 2:15-cv-00510-RFB-VCF

Plaintiff,

**ORDER ON SECOND MOTION FOR
LEAVE TO AMEND (ECF NO. 133)**

v.

THE FEDERAL SAVINGS BANK,

Defendant.

1 denied the motion. (ECF No. 78). Plaintiff filed a Motion to Reconsider the Magistrate Judge’s
2 ruling on October 30, 2016. (ECF No. 79). On August 11, 2017, the Court held a hearing on the
3 motion to reconsider, as well as the parties’ partial motions for summary judgment. (ECF No. 111).
4 The Court denied the motion to reconsider on the record. Following the hearing, the Court
5 consolidated a related matter into the case, and reopened discovery on the issues pertaining to the
6 consolidated case.¹ A Scheduling Order was entered by the Magistrate Judge in relation to the
7 consolidated case on August 24, 2017, giving the signing parties until October 26, 2017 to amend
8 the pleadings. (ECF No. 117). Plaintiff filed the instant motion on September 26, 2017. (ECF No.
9 133).² Defendant filed a Response on October 5, 2017. (ECF No. 136). On October 12, 2017,
10 Plaintiff filed a Reply. (ECF No. 137).

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12 **II. LEGAL STANDARD**

13 Federal Rule of Civil Procedure 15(a) instructs that courts should “freely” grant a party
14 leave to amend “when justice so requires.” However, once a scheduling order has been entered
15 pursuant to Federal Rule of Civil Procedure Rule 16, the district court is to first apply the standards
16 of Rule 16 rather than those of Rule 15. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
17 607-08 (9th Cir. 1992); see also Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294 (9th Cir. 2000)
18 (“[T]he district court correctly found that it should address the issue under [Rule] 16 because it
19 had filed a pretrial scheduling order that established a timetable for amending the pleadings, and
20 the deadline had expired”). The “good cause” standard of Rule 16 “primarily considers the
21 diligence of the party seeking the amendment,” and a party’s “carelessness is not compatible with
22 a finding of diligence and offers no reason for a grant of relief.” In re W. States Wholesale Nat.
23 Gas Antitrust Litig., 715 F.3d 716, 737 (9th Cir. 2013) (quoting Johnson, 975 F.2d at 609).

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26 ¹ The Court entered an Order granting the Consolidated Plaintiff’s Stipulation to Dismiss
27 on January 11, 2018. (ECF No. 145).

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2 Plaintiff also made an additional request for leave to plead punitive damages in a motion
asking the Court to correct a clerical order on the minutes to the August 11, 2017 hearing. (ECF
No. 129).

1 **III. DISCUSSION**

2 Plaintiff argues that leave to amend the Complaint should be granted because the facts and
3 circumstances noted in the prior motion for leave to amend have changed, given the Court's re-
4 opening of discovery in light of the consolidated case. As the Scheduling Order was modified to
5 extend discovery, Plaintiff contends that a diligence inquiry is not warranted. Plaintiff also argues
6 that Defendant faces no prejudice from amendment, as the extended discovery period allowed
7 Defendant to address any issues with respect to punitive damages. Plaintiff additionally re-asserts
8 arguments made in previous motions, including that the conduct discovered during litigation merits
9 an award of punitive damages. In response, Defendant argues that the deadline for amending the
10 pleadings was September 18, 2015, and that Plaintiff nonetheless was given leave to file its First
11 Amended Complaint on March 17, 2016, in which Plaintiff did not plead punitive damages.
12 Defendant contends that there is no good cause for Plaintiff's delay in seeking to assert punitive
13 damages.

14 The Court finds that Plaintiff fails to satisfy the good cause standard of Rule 16, for the
15 same reasons as articulated on the record during the August 11, 2017 hearing. The Court affirmed
16 the Magistrate Judge's denial of Plaintiff's prior motion for leave to amend, finding that no clear
17 error was committed. The operative Amended Complaint does not provide sufficient notice to
18 Defendant that Plaintiff seeks punitive damages, and Plaintiff's acknowledgment in the instant
19 motion that "a demand of punitive damages is dependent upon the existing facts and theories in
20 the case" demonstrates that Plaintiff failed to act with diligence in amending the Complaint to
21 plead punitive damages before the deadline for amendment passed. The Court does not find that
22 the "facts and circumstances" have changed between the earlier request for leave to plead punitive
23 damages and the filing of the instant motion, such that Plaintiff is now entitled to relief. Therefore,
24 the motion for leave to amend is denied.

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1 **IV. CONCLUSION**

2 Accordingly,

3 **IT IS ORDERED** that Plaintiff's Second Motion for Leave to Amend to Plead Punitive
4 Damages (ECF No. 133) is DENIED.

5 **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss Count II of North
6 American Marketing, Inc.'s First Amended Complaint (ECF No. 127) is DENIED AS MOOT.

7 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Amend / Correct [111] Order
8 (ECF No. 129) is DENIED AS MOOT.

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10 DATED: May 9, 2018

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13 **RICHARD F. BOULWARE, II**
14 UNITED STATES DISTRICT COURT

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